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9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 TRAFFICSCHOOL.COM, INC., a
 California Corporation; DRIVERS ED
 13 DIRECT, LLC, a California limited
 liability company,

14 Plaintiffs,

15 v.

16 EDRIVER, INC., ONLINE GURU,
 INC., FIND MY SPECIALIST, INC.,
 17 and SERIOUSNET, INC., California
 corporations, RAVI K. LAHOTI, an
 18 individual; RAJ LAHOTI, an individual;
 DOES 1 through 10,

19 Defendants.
 20

Case No: CV 06-7561 PA (CWx)

**DEFENDANTS' EVIDENTIARY
 OBJECTIONS AND MOTION TO
 STRIKE SUPPLEMENTAL
 DECLARATION OF JOSEPHINE A.
 BROSAS IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 ATTORNEY'S FEES AND COSTS**

Date: December 5, 2011

Time: 1:30 p.m.

Ctrm: 15

Judge: Honorable Percy Anderson

Complaint Filed: November 28, 2006

21
 22 Defendants Edriver, Inc., Online Guru, Inc., Find My Specialist, Inc.,
 23 Seriousnet, Inc., Ravi K. Lahoti, and Raj Lahoti ("Defendants") hereby object to
 24 and move to strike portions of the Supplemental Declaration Of Josephine A.
 25 Brosas In Support Of Plaintiffs' Motion For Attorney's Fees And Costs, including
 26 certain exhibits attached thereto filed by plaintiffs Trafficschool.com, Inc. and
 27 Drivers Ed Direct, LLC ("Plaintiffs") in support of Plaintiffs' Motion for Attorney
 28

DEFENDANTS' EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE SUPPLEMENTAL
 DECLARATION OF JOSEPHINE A. BROSAS ISO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND
 COSTS

CASE NO. CV 06-7561 PA (CWx)

1 Fees and Costs as set forth herein.

2 As a general matter, the Exhibits attached to Plaintiffs' Response to
 3 Defendants' Shorthand Objections are *not* true and correct copies of what Ms.
 4 Brosas declares them to be – as can be readily discerned by a passing glance at the
 5 Exhibits. Rather than being merely portions of entries from the Joint Statement,
 6 the Exhibits contain additional markings, as well as Ms. Brosas' additional
 7 “comments” and argumentation. Essentially, the Brosas Supplemental Declaration
 8 fails to serve the purpose of authentication, and worse, only selectively provides
 9 examples of entries rather than allowing the Joint Statement to speak for itself.

10 **Supplemental Declaration of Josephine A. Brosas**

11 1. Page 2, Lines 12-28 and Page 3, Lines 1-2: “I have reviewed the
 12 Excel spreadsheets submitted by Defendants as “Supplemental Joint Statement on
 13 Fees” (Docket Entry [D.E.] # 323-2). These spreadsheets appear to be based on the
 14 spreadsheets which I prepared based on the invoices generated in this matter.
 15 Defendants added their position for each disputed item as well as columns and
 16 entries for hours defendants believe should be awarded and reduced fees. These
 17 spreadsheets contain the following tabs: (1) Pleadings; (2) Discovery; (3) MSJ; (4)
 18 Pre-trial; (5) Trial through Post-Judgment; (6) Contempt; (7) Attorney's Fees
 19 Motion; (8) Joint Status Report. At the bottom of each of the tabs for Pleadings,
 20 Discovery, MSJ, Pre-trial, Trial through Post-Judgment and Contempt is a
 21 summary of the “Total Hours Billed” and the corresponding “Total Amount
 22 Billed”, and the “Total Hours Written-Off” and the corresponding “Total Amount
 23 Written-Off”. Plaintiffs are only claiming in this motion the “Total Hours Billed”.
 24 For each tab, I compared the “Total Hours Billed” to entries in Table 3 attached to
 25 Plaintiffs' Motion which summarizes the hours that Plaintiffs are claiming. I also
 26 reviewed pages 299 and 349 referenced in Footnote 2 of Defendants' Opposition
 27 and confirmed that the “write-offs” and “no charges” are not being claimed by

1 Plaintiffs as part of the application for fees. Attached to the Reply as EXHIBIT A
 2 are true and correct copies of summaries I prepared which illustrate that Plaintiffs
 3 are not claiming "write-offs" and "no charges".

4 **Objection:** Testimony concerning Exhibit A and the invoices and amounts
 5 allegedly charged to the client are not the best evidence of what was actually billed
 6 to Plaintiffs. As confirmed by the United States Supreme Court in Hensley v.
 7 Eckerhart, 461 U.S. 424, 434, hours that are not properly billed to one's client also
 8 are not properly billed to one's adversary pursuant to statutory authority. The
 9 invoices were redacted on the last page of the bills where it presumably showed
 10 what was actually billed to the client. The best evidence of what was actually
 11 billed to the client, the invoices themselves, has been redacted. Therefore, there is
 12 no admissible evidence that establishes what was billed to the client and the Court
 13 should not award any attorneys' fees or costs to the extent it cannot determine if
 14 Plaintiffs' were charged for that time. Fed. R. Evid. 801, 802.

15 Sustain _____ Overrule _____

16 2. Page 3, Lines 3-6: "Attached as Exhibit B to the Response to
 17 Defendants' "Shorthand Objections" are true and correct copies of certain entries
 18 from the Pleadings, Discovery and Pre-Trial tabs of the Supplemental Joint
 19 Statement on Fees filed by Defendants which Defendants have designated as "A.""

20 **Objection:** Testimony concerning Exhibit B, which consists of selective
 21 portions of a document constitutes inadmissible hearsay and lacks foundation and
 22 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Defendants'
 23 objection based upon the shorthand designation "A" where a partner did work that
 24 should have been done by an associate or paralegal is not fully addressed; only
 25 examples are provided. Plaintiffs have failed to meet their burden of
 26 reasonableness for each entry this objection applied to.

27 Sustain _____ Overrule _____

1 3. Page 3, Lines 7-11: “Attached as Exhibit C to the Response to
2 Defendants’ “Shorthand Objections” are true and correct copies of portions of
3 Exhibit F to Plaintiffs’ Motion as well as the Joint Statement on Costs. I prepared
4 the summaries on the right hand side of the tables which shows that Plaintiffs are
5 claiming costs which were not initially taxed by the Clerk.”

6 **Objection:** Testimony concerning Exhibit C, which consists of selective
7 portions of a document constitutes inadmissible hearsay and lacks foundation and
8 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
9 not be allowed to submit evidence that should have been included in the original
10 motion in a reply.

11 Sustain _____ Overrule _____

12 4. Page 3, Lines 12-15: “Attached as Exhibit D to the Response to
13 Defendants’ “Shorthand Objections” are true and correct copies of certain entries
14 from the Pleadings, Discovery and Pre-Trial tabs of the Supplemental Joint
15 Statement on Fees filed by Defendants which Defendants have designated as “D.””

16 **Objection:** Testimony concerning Exhibit D, which consists of selective
17 portions of a document constitutes inadmissible hearsay and lacks foundation and
18 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
19 not be allowed to submit evidence that should have been included in the original
20 motion in a reply.

21 Sustain _____ Overrule _____

22 5. Page 3, Lines 16-19: “Attached as Exhibit E to the Response to
23 Defendants’ “Shorthand Objections” are true and correct copies of certain entries
24 from the Discovery, Pre-Trial and MSJ tabs of the Supplemental Joint Statement
25 on Fees filed by Defendants which Defendants have designated as “E.””

26 **Objection:** Testimony concerning Exhibit E, which consists of selective
27 portions of a document constitutes inadmissible hearsay and lacks foundation and

1 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
 2 not be allowed to submit evidence that should have been included in the original
 3 motion in a reply. Moreover, Defendants' objection based upon the shorthand
 4 designation "E" where excessive time was recorded is not fully addressed; only
 5 examples are provided. Plaintiffs have failed to meet their burden of
 6 reasonableness for each entry this objection applied to.

7 Sustain _____ Overrule _____

8 6. Page 3, Lines 20-23: "Attached as Exhibit F to the Response to
 9 Defendants' "Shorthand Objections" is a true and correct copy of an entry from
 10 the Trial through Post-Judgment tab of the Supplemental Joint Statement on Fees
 11 filed by Defendants which Defendants have designated as "H.""

12 **Objection:** Testimony concerning Exhibit F, which consists of selective
 13 portions of a document constitutes inadmissible hearsay and lacks foundation and
 14 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
 15 not be allowed to submit evidence that should have been included in the original
 16 motion in a reply.

17 Sustain _____ Overrule _____

18 7. Page 3, Lines 24-27: "Attached as Exhibit G to the Response to
 19 Defendants' "Shorthand Objections" are true and correct copies of certain entries
 20 from the Discovery, MSJ and Pre-Trial tabs of the Supplemental Joint Statement
 21 on Fees filed by Defendants which Defendants have designated as "L.""

22 **Objection:** Testimony concerning Exhibit G, which consists of selective
 23 portions of a document constitutes inadmissible hearsay and lacks foundation and
 24 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
 25 not be allowed to submit evidence that should have been included in the original
 26 motion in a reply.

27 Sustain _____ Overrule _____

1 8. Page 4, Lines 1-4: “Attached as Exhibit H to the Response to
2 Defendants’ “Shorthand Objections” are true and correct copies of certain entries
3 from the Pleadings, Discovery, Pre-Trial and MSJ tabs of the Supplemental Joint
4 Statement on Fees filed by Defendants which Defendants have designated as
5 “NL.””

6 **Objection:** Testimony concerning Exhibit H, which consists of selective
7 portions of a document constitutes inadmissible hearsay and lacks foundation and
8 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
9 not be allowed to submit evidence that should have been included in the original
10 motion in a reply.

11 Sustain _____ Overrule _____

12 9. Page 4, Lines 5-8: “Attached as Exhibit I to the Response to
13 Defendants’ “Shorthand Objections” are true and correct copies of certain entries
14 from the Pleadings and Pre-Trial tabs of the Supplemental Joint Statement on Fees
15 filed by Defendants which Defendants have designated as “NP.””

16 **Objection:** Testimony concerning Exhibit I, which consists of selective
17 portions of a document constitutes inadmissible hearsay and lacks foundation and
18 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
19 not be allowed to submit evidence that should have been included in the original
20 motion in a reply.

21 Sustain _____ Overrule _____

22 10. Page 4, Lines 9-12: “Attached as Exhibit J to the Response to
23 Defendants’ “Shorthand Objections” are true and correct copies of certain entries
24 from the Pleadings, Discovery, MSJ, Pre-Trial and Trial through Post-Judgment
25 tabs of the Supplemental Joint Statement on Fees filed by Defendants which
26 Defendants have designated as “R.””

27 **Objection:** Testimony concerning Exhibit J, which consists of selective

portions of a document constitutes inadmissible hearsay and lacks foundation and is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should not be allowed to submit evidence that should have been included in the original motion in a reply. The fact that Plaintiffs decided to include such extensive redactions that rendered it impossible to assess for reasonableness should result in denial of the fees because even if there was some description in a portion of the entry, the redaction could include fees that on their face are not compensable (such as time related to the claims under the Business and Professions Code that were denied and are non-Lanham Act claims). The fact that this results in a lumped entry is further grounds to deny the entire request which is why the designation of R was used to deny the request in its entirety as the redactions so tainted the entry as to render it completely non-compensable.

Sustain _____ Overrule _____

11. Page 4, Lines 13-16: “Attached as Exhibit K to the Response to Defendants’ “Shorthand Objections” are true and correct copies of certain entries from the Pleadings, Discovery, MSJ, Pre-Trial and Trial through Post-Judgment tabs of the Supplemental Joint Statement on Fees filed by Defendants which Defendants have designated as “V.””

Objection: Testimony concerning Exhibit K, which consists of selective portions of a document constitutes inadmissible hearsay and lacks foundation and is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should not be allowed to submit evidence that should have been included in the original motion in a reply.

Sustain _____ Overrule _____

12. Page 4, Lines 17-20: “Attached as Exhibit L to the Response to Defendants’ “Shorthand Objections” are true and correct copies of certain entries

1 from the Pleadings and Discovery tabs of the Supplemental Joint Statement on
 2 Fees filed by Defendants which Defendants have designated as “no charge.””

3 **Objection:** Testimony concerning Exhibit L, which consists of selective
 4 portions of a document constitutes inadmissible hearsay and lacks foundation and
 5 is not the best evidence. Fed. R. Evid. 602, 801, 802. Moreover, Plaintiffs should
 6 not be allowed to submit evidence that should have been included in the original
 7 motion in a reply.

8 Sustain _____ Overrule _____

9 13. Page 5, Lines 1-5: “Attached as Exhibit M to the Reply is a true and
 10 correct copy of the Introduction page of the AIPLA Report of the Economic
 11 Survey for 2009, which states in the first paragraph that the AIPLA reports are
 12 only “conducted every other year by AIPLA”. This means that there is no AIPLA
 13 Report of the Economic Survey for 2008 which would have contained the
 14 prevailing market rate data for 2007.”

15 **Objection:** The reference to the AIPLA survey for 2009 and the NLJ’s
 16 2010 Billing Survey Report is irrelevant, misleading, confusing, and prejudicial.
 17 The majority of the fees and costs sought by Plaintiffs were incurred in
 18 Los Angeles in 2006 and 2007. The survey and testimony relating thereto should
 19 be stricken. The fact that there is not a survey to cover the relevant time confirms
 20 that Plaintiffs have not met their burden to support a rate other than what was
 21 charged to their client and anything to the contrary is improper opinion ///

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1 testimony. Fed. R. Evid. 401, 403, 602, 701. Exhibit M should be stricken.

2 Sustain _____ Overrule _____

3 Defendants respectfully request that the Court sustain the above objections
4 and strike the corresponding evidence.

5 Dated: November 28, 2011

FOLEY & LARDNER LLP

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9 By: /s/ Kathryn M.S. Catherwood
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10 Attorneys for Defendants
EDRIVER, INC., ONLINE GURU
11 INC., FIND MY SPECIALIST, INC.,
SERIOUSNET, INC., RAVI K.
12 LAHOTI, RAJ LAHOTI
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CERTIFICATE OF SERVICE

I hereby certify on this 28th day of November, 2011 that a copy of the foregoing was filed electronically through the Court's CM/ECF system, with notice of case activity automatically generated and sent electronically to all parties.

FOLEY & LARDNER LLP

By: /s/ Kathryn M.S. Catherwood
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